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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

JAN 20 1995

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )

Implementation of Sections 3(n)  
and 332 of the Communications Act )  
Regulatory Treatment of Mobile )  
Services )

GN Docket No. 93-252

To: The Commission

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**COMMENTS OF AIRTOUCH PAGING IN SUPPORT OF  
PETITIONS FOR RECONSIDERATION**

AirTouch Paging<sup>1/</sup>, by its attorneys, hereby files comments in support of certain Petitions for Reconsideration of the Third Report and Order, FCC 94-212, released September 23, 1994.<sup>2/</sup> Specifically, AirTouch Paging is commenting in support of the Petition for Partial Reconsideration of Massachusetts-Connecticut Mobile Telephone Company, Mobile Radio Communications, Inc. and Radiophone, Inc. (the "Joint Petitioners"), the Petition for Reconsideration filed by Paging Network, Inc. ("PageNet") and the Petition for Reconsideration and Clarification filed by the Personal Communications Industry Association ("PCIA"). The following is respectfully shown:

<sup>1/</sup> AirTouch Paging is a substantial provider of Part 22 and Part 90 Commercial Mobile Radio Services, and has been an active participant throughout this Regulatory Parity proceeding.

<sup>2/</sup> General Docket No. 93-252; PR Docket No. 93-144; PR Docket No. 89-553.

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List A B C D E

**I. The Commission Should Revise Its  
Definition of "Modification Application"  
For Both Part 22 and Part 90 Facilities**

1. The Joint Petitioners devote a substantial portion of their petition to challenging the Commission proposal to define as an "initial" license application any new location located more than 2 kilometers (1.2 miles) from an applicant's existing station. AirTouch Paging strongly agrees that this definition is much too restrictive.

2. The Commission has reasoned that the two kilometer standard provides licensees with adequate leeway to relocate stations without being subjected to competing bidders. This is not true, however. The location of suitable antenna sites has become increasingly difficult over time. The proliferation of wireless services has increased competition for tower space. This has occurred concurrently with increased public opposition to new antenna facilities, either on aesthetic or environmental grounds. The net result is that carriers faced with the loss of a site will increasingly find themselves having to relocate existing facilities to locations more than 1.2 miles away from existing sites. The consequences of such a relocation would be directly contrary to the intent of the statute if the carrier is forced to reacquire, through an auction proceeding, a facility it has owned and operated for a considerable period of time. Or, if the operating rights

for the facility are lost to a challenger, existing services to the public will be disrupted.

3. The auction authority embodied in the Omnibus Budget Reconciliation Act of 1994 makes it clear that auction authority only applies to new station proposals and not to modifications of existing stations.<sup>3/</sup> The Commission has undermined this well considered statutory demarcation by defining "new" so broadly as to effectively subject existing Commercial Mobile Service licenses to auctions by competitors in numerous circumstances.

4. AirTouch Paging believes that the strongest argument against the two kilometer rule is that it will not sustain judicial scrutiny. It has long been the rule in the Public Mobile Services that an application proposing an additional transmitter site on an existing frequency with a service area contour overlapping the existing facility by fifty percent or more is a modification application and not a new station request.<sup>4/</sup> The only apparent reason for the Commission abandoning this long-standing definition is to increase the number of circumstances in which mutually exclusive applications will be eligible for auction. The Budget Reconciliation Act of 1994 makes it clear, however,

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<sup>3/</sup> See discussion at Second Report and Order (PP Docket No. 93-253), 9 FCC Rcd 2348, 2355 (1994).

<sup>4/</sup> See old section 22.16(b)(2).

that raising money through auctions is not to be the primary determinant in selecting processing rules.

5. On balance, AirTouch Paging agrees with the Joint Petitioners that the Commission must abandon the two kilometer rule in favor of the fifty percent overlap rule that has served the industry so well for such a long period of time.

**II. Pre-Authorization Operation of  
Mobile Service Facilities Under Blanket or  
Conditional Authorizations Must Be Allowed**

6. Both PageNet and PCIA urge the Commission to permit pre-authorization operation of mobile service facilities under blanket or conditional authorizations.<sup>5/</sup> AirTouch Paging strongly endorses these proposals.

7. In the recent rewrite of Part 22 of the Commission's Rules<sup>6/</sup>, the Commission dramatically reduced licensing requirements with respect to "internal" sites for wide-area paging systems.<sup>7/</sup> There is, however, no comparable procedure for allowing Part 90 licensees to establish "fill-in" sites without notification to the Commission. Consequently, the overriding regulatory

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<sup>5/</sup> See PageNet petition, Section II; PCIA petition, Section I-A.

<sup>6/</sup> See CC Docket No. 92-115.

<sup>7/</sup> Report and Order, FCC 94-201, released September 9, 1994 at ¶'s 22-29.

objective of achieving parity among and between competing services licensed under Parts 22 and 90 of the rules will not be achieved unless provisions are made to enable commercial paging operators licensed under Part 90 to modify facilities without undue paperwork and delays.

8. Based upon these considerations, AirTouch Paging supports the proposals of PageNet and PCIA that would enable the pre-authorization operation of modification facilities under either a blanket authorization or conditional authorization policy. Alternatively, AirTouch Paging urges the Commission to adopt exemptions from regulatory filing requirements for Part 90 that would parallel those that exist in Part 22, and thereby relieve carriers of the obligation to seek prior Commission approval of minor system changes affecting only internal sites.

### **III. Renewal Expectancies Should Be Accorded to All Commercial Mobile Service Licensees**

9. AirTouch Paging also agrees with both PageNet and PCIA that the Commission should codify the renewal expectancy for all Commercial Mobile Radio Services.<sup>8/</sup>

10. The rationale for a renewal expectancy has been well articulated in numerous Commission proceedings in which the renewal standard has been adopted. Most recently,

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<sup>8/</sup> See Petition of PageNet, Section III; PCIA Petition, Section II(c).

expectancy has been accorded to cellular telephone operators. There is no reason for other Commercial Mobile Radio Service providers not to be accorded the same expectancy. Renewal expectancies add stability to the communications marketplace, and serve to discourage unnecessary litigation. It would be appropriate for such an expectancy to be codified in the new rules.

### Conclusion

The foregoing premises having been duly considered, AirTouch Paging respectfully requests that the rules adopted in the Third Report and Order be modified in a manner consistent herewith.

Respectfully submitted,

AIRTOUCH PAGING

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January 20, 1995

**CERTIFICATE OF SERVICE**

I, Sondra Renee Rich, a secretary in the law firm of Bryan Cave, hereby certify that I have, on this 20th day of January, 1995, served copies of the foregoing **Comments of AirTouch Paging in Support of Petitions for Reconsideration** by first-class, United States mail, postage prepaid, to the following:

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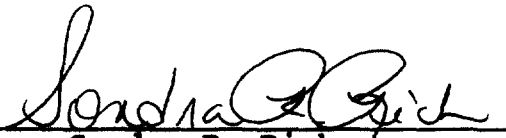
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